

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305, titled Medical Dispute Resolution-General, and 133.307, titled Medical Dispute Resolution of a Medical Fee Dispute, a review was conducted by the Medical Review Division regarding a medical fee dispute between the requestor and the respondent named above.

I. DISPUTE

1. a. Whether there should be reimbursement for date of service 10-19-01.
- b. The request was received on 5-20-02.

II. EXHIBITS

1. Requestor, Exhibit I:
 - a. TWCC 60 and Letter Requesting Dispute Resolution
 - b. HCFA(s)
 - c. TWCC 62s, Reaudits
 - d. Medical Records
 - e. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.
2. Respondent, Exhibit II:
 - a. TWCC 60 and/or Response to a Request for Dispute Resolution
 - b. HCFA(s)
 - c. TWCC62s, Reaudits
 - d. Medical Records
 - e. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.
3. Per Rule 133.307 (g) (3), the Division forwarded a copy of the requestor's 14 day response to the insurance carrier on 7-15-02. Per Rule 133.307 (g) (4) or (5), the carrier representative signed for the copy on 7-15-02. The response from the insurance carrier was received in the Division on 6-13-02, 6-14-02, 6-17-02 and 6-26-02. Based on 133.307 (i) the insurance carrier's response is timely.
4. Notice of Additional Information Submitted by Requestor is reflected as Exhibit III of the Commission's case file.

III. PARTIES' POSITIONS

1. Requestor: Letter dated 6-12-02:
"Ms. ___ filled out a request to change treating doctors on August 1, 2001, to have her care transferred to me. We requested a TWCC 53 form from the TWCC Dallas Field Office on that date; ___ from the Dallas Field Office faxed us a blank form. The patient immediately completed the form. We then faxed the completed form from our

office back to the Dallas Field Office that day, using the same cover sheet... The patient reports that the initial request was denied due to the fact that she needed to ‘discuss her concerns with her treating doctor’. However, **she did not receive word of denial of this until after November 2, 2001.** We do not know why the request was not denied until such a late date. We were unaware of any denial at the time of surgery...Ms. ____ then filled out a second TWCC 53 on November 13, 2001, citing in further detail her problems with Dr. _____. My office faxed this to TWCC on November 15, 2001...**The second request was accepted and approved on November 28, 2001.”**

2. Respondent: Letter dated 6-12-02.
“...Dr. ____ performed a surgery on claimant ____ and did not obtain preauthorization and prior to becoming treating doctor effective November 28, 2001. Secondly, claimant was originally treating with Dr. ____ from the onset of the injury until she reached Maximum Medical Improvement on March 16, 2001. Ms. ____ began seeking treatment on or about 8/1/01 with Dr. ____ on her own without any referral from treating Dr.____ nor change of treating doctor approval TWCC 53 from the commission. An approved TWCC 53 was not effective and approved until November 28, 2001 and received by our office on December 10, 2001.

IV. FINDINGS

1. Based on Commission Rule 133.307(d) (1) (2), the only date of service eligible for review is 10-19-01
2. The Carrier has denied the disputed date of service as reflected on the TWCC 62s as “K – Not appropriate Health Care Provider”; reaudit dated 3-1-02 indicates “Per adjuster not treating Dr.”; reaudit dated 3-12-02 indicated, “Deny per adjuster. Dr. ____ not treating Dr. at time of surgery. (Became treating 11-28-01).

V. RATIONALE

Medical Review Division's rationale:

Pursuant to Section 408.021 (c); “Except in an emergency, all health care must be approved or recommended by the employee’s treating doctor.” The provider has billed for a “Right shoulder arthroscopic SLAP lesion repair”. The date of the surgery was noted as 10-19-01.

There was no written referral noted in the dispute packet nor was the request to change treating Dr. approved until 11-28-01. A copy of the TWCC53, “Employee’s request to change Treating Doctor” was sent to the requested doctor. The instructions to the claimant on the form indicated that the claimant should wait for the approval before seeing the new doctor. Medical documentation did not support that the surgical procedure was an emergency.

Therefore, no reimbursement is recommended for date of service 10-19-01.

MDR: M4-02-3600-01

The above Findings and Decision are hereby issued this 25th day of October 2002.

Lesa Lenart
Medical Dispute Resolution Officer
Medical Review Division

LL/ll